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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,656	11/14/2003	John E. Howe	1138-003	9852
34060 7590 05/21/2010 MICHAEL N. HAYNES 1341 HUNTERSFIELD CLOSE KESWICK, VA 22947				
EXAMINER BATURAY, ALICIA				
ART UNIT		PAPER NUMBER		
2446				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/713,656	Applicant(s) HOWE ET AL.
Examiner Alicia Baturay	Art Unit 2446

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1-9, 11-14, 17-26, 28-31, 34-38 and 40-48.
Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Benjamin R Bruckart/
Primary Examiner, Art Unit 2446

Continuation of 11, does NOT place the application in condition for allowance because:

Applicant Argues: Ignatius does not suggest the ability of placing a write call to a driver specifying two pieces of data and two corresponding locations to send the data to.

In Response: The examiner submits that the combination of Ignatius and Ganger teaches a write call (the computer systems interact to store data)...comprising a first destination (applications) and pointing to a first quantity of data stored in virtual memory destined for the first destination (in making decisions to send data to the storage area network, the computing system is typically accessed to get information from a manager module to access a master map for determination for the location of transmission of the data - see Ignatius, col. 15, line 55 - col. 16, line 15) and a second destination (data mover) and pointing to a second quantity of data stored in virtual memory destined for the second destination (the data mover 122 may also transmit data to a data mover 1126 of the storage area network. The data is then transmitted to the network attached storage where a data mover receives the data - see Ignatius, col. 16, lines 4-27). Therefore, the rejection is proper and the rejection stands.

Applicant Argues: Ignatius also clearly does not teach or suggest sending data from the driver to two different locations.

In Response: The examiner submits that the combination of Ignatius and Ganger teaches a first destination (applications - see Ignatius, col. 15, line 55 - col. 16, line 15)...and a second destination (data mover 1142 - see Ignatius, col. 16, lines 4-27). Additionally, "the computing systems 1102, 1104 and 111106 interact to store data in either a storage area network 1108 or a network attached storage 11110." Id at col. 15, lines 55-65. This shows two different locations. Therefore, the rejection is proper and the rejection stands.

Applicant Argues: The claimed subject matter would not have been obvious to one skilled in the art.

In Response: In this case, it has been shown that Ignatius is directed to a storage and data management system that establishes a data transfer pipeline between an application and a storage media using a source data mover and a destination data mover. The data movers are modular software entities which compartmentalize the differences between operating systems and media types. In addition, they independently interact to perform encryption, compression, etc., based on the content of a file as it is being communicated through the pipeline (see Ignatius, Abstract). In analogous art, Ganger is drawn to application-level networking, which is a promising software organization for improving performance and functionality for important network services. The system includes application-level support for standard network services, while at the same time allowing application writers to specialize networking services. With more detailed measurements and profiling, these overall performance improvements are also broken down and attributed to the specific specializations described, providing server writers with insights into where to focus their optimization efforts (see Ganger, Abstract).

Additionally, the motivation to combine Ignatius and Ganger was given in the rejection as "to reduce redundancy (most notably, repeated data copying), both in work and in memory usage (Ganger, page 68, 5.1 Performance and Complexity Problems in HTTP Servers, 2nd paragraph)."

Moreover, the KSR decision supports the rationale that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Ignatius was used as the primary reference, which is seen as disclosing all of the claimed subject matter except for performing a zero-copy write. However, the zero-copy write limitation is covered by Ganger. So all of the component parts of the claim are known in Ignatius and Ganger. Thus, it would have been obvious to one having ordinary skill in the art to use the zero-copy write procedure taught by Ignatius with the storage and management system that establishes a data transfer pipeline between an application and storage media discussed in the Ignatius reference, since a zero-copy write procedure could be used in combination with a data transfer pipeline system to achieve the predictable results of improving performance and functionality for important network services by compartmentalizing the differences between media types. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Ignatius and Ganger.